without a difference would probably be done away with, and the final result would be more satisfactory than the present practice, not the less grateful if this opinion stood and the *Kimpton Case* was overthrown.

UNCONSTITUTIONALITY OF THE SUGAR BOUNTY. — The opinion declaring the sugar bounty unconstitutional, news of which has been widely circulated in the general press, was delivered by Shepard, J., in the Court of Appeals of the District of Columbia, in *United States ex rel. the Miles Planting Co.* v. *Carlisle*, 23 Washington Law Reporter, 33, — Morris, J., concurring. Alvey, C. J., declined to express an opinion on the constitutional point. It is apparent on the most cursory examination that the opinion on the constitutional point is entirely *obiter*, for the law had been repealed, and the real case of counsel for the plaintiff was founded only on a general clause excepting vested rights. That clause the court of course held not to apply to an expectancy of a bounty or gratuity. Then the court go on to declare that the bounty to be constitutional must be for a federal public purpose, and to declare that the promotion of the sugar interest is not sufficient. The cases cited are familiar ones: *Loan Association* v. *Topeka*, 20 Wall. 655, and its well-known phrase, that a tax to pay a bounty "is none the less a robbery because it is done under the forms of law, and is called taxation," *Lowell* v. *Boston*, 111 Mass. 489, and *Cole* v. *Lagrange*, 113 U. S. 1. The other ground of the decision seems so clearly good that one wonders why the court launch a *brutum fulmen* against a repealed act, instead of letting the dead past bury its dead. The profession are indebted to Mr. Justice Shepard for a careful and scholarly consideration of the limits of taxation; but the profession must also recognize that it is a discussion *obiter*, and in no sense a decision.

POTTER *v.* THE UNITED STATES. — Mr. Asa P. Potter is to have a new trial, and lawyers will acknowledge that no other result was desirable on the case, as it came up in the Supreme Court (15 Sup. Ct. Rep. 144). Section 5208, Rev. Stat., passed in 1869, provided that no national-bank officer should certify a check unless the drawer had on deposit at the time an amount of money equal to the amount specified in the check. No penalty was imposed for a violation of this section, but in 1882 (22 Stat. 166) it was enacted that whoever should "wilfully violate" the statute of 1869 should be guilty of a misdemeanor, and should, etc. The court held that the word "wilfully" meant more than voluntarily, and that one could not wilfully violate a law if he supposed he was not violating it at all. Accordingly it is held to have been error to reject evidence of a *bona fide* agreement, by the bank officers, that a certain depositor's deficit should be treated as a loan, and that checks should be certified for him on condition that he deposited from day to day sums sufficient to cover the checks. Such an agreement, if the defendant honestly believed it lawful, would tend to negative a wilful violation of the law, although not conclusive of innocence. It was on this point that the actual decision was made, the court holding in effect that the statute required a specific intent on the defendant's part.

The indictment was held good. It alleged that the defendant wilfully certified a check by writing across the face thereof certain words. There was no allegation of delivery. Mr. Justice Brewer took it for granted